OPINION OF ADVOCATE GENERAL LÉGER

delivered on 12 October 2000 [1]

1. The Korkein Oikeus (Finnish Supreme Court) seeks a preliminary ruling on the question whether the provisions of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, [2] are applicable in the case of a takeover of the operation of seven regional bus lines by a legal person governed by private law, subsequent to a procedure for the award of a public service contract conducted in accordance with the procedures laid down by Directive 92/50/EEC. [3]

I — Legal background

2. According to Article 1(1), Directive 77/187 applies 'to the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger.'

3. Article 2 defines the principal terms used. It states at point (a) that 'transferor' means 'any natural or legal person who, by reason of a transfer within the meaning of Article 1(1), ceases to be the employer in respect of the undertaking, business or part of the business'. Point (b) defines 'transferee' as 'any natural or legal person who, by reason of a transfer within the meaning of Article 1(1), becomes the employer in respect of the undertaking, business or part of the business'.

4. As is stated in its twentieth recital, Directive 92/50 aims to improve the access of service providers to procedures for the award of contracts with a view to eliminating practices that restrict competition in general and participation in contracts by other Member States' nationals in particular.

5. Article 1(a) of that Directive defines 'public service contracts' as contracts for pecuniary interest concluded in writing between a service provider and a contracting authority. Article 1(b) provides that 'contracting authorities' means the State,

1 — Original language: French.

2 — OJ 1977 L 61, p. 26 (hereinafter 'Directive 77/187' or 'the Directive').

3 — Council Directive of 18 June 1992, relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).

regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law.

6. Article 3(1) of Directive 92/50 states that 'In awarding public service contracts or in organising design contests, contracting authorities shall apply procedures adapted to the provisions of this Directive'. Article 3(2) provides that 'Contracting authorities shall ensure that there is no discrimination between different service providers'.

7. By virtue of Annex 1A, referred to in Article 8, Directive 92/50 applies inter alia to land transport services.

II — Facts and procedure

8. Following a call for tenders, the Pääkaupunkiseudun Yhteistyövaltuuskunta (Greater Helsinki Joint Board, hereinafter 'YTV') awarded, for a period of three years, the operation of seven regional bus routes, previously operated by Hakunilan Liikenne Oy (hereinafter 'Hakunilan Liikenne'), to Oy Liikenne Ab (hereinafter 'Liikenne').

9. Hakunilan Liikenne, which operated those routes with 26 buses, then dismissed 45 drivers. Liikenne reengaged 33 of them, who had applied to work with that company. They also employed 18 other drivers. The 33 former Hakunilan Liikenne drivers were reengaged on terms applying under the national collective agreement for the sector, which were as a whole less favourable than those which applied at Hakunilan Liikenne.

10. The passage of the operation from Hakunilan Liikenne to Liikenne did not involve any transfer of vehicles or other assets relating to the operation of the bus routes in question.[4] While waiting for delivery of 22 new buses which it had ordered, Liikenne leased two buses from Hakunilan Liikenne for a period of two or three months, and purchased from the latter the uniforms of some of the drivers who had transferred to its employment.

11. Mr Liskojärvi and Mr Juntunen are two of the 33 drivers who were dismissed by Hakunilan Liikenne and reengaged by Liikenne. As they considered that there had been a transfer of a business between the

4 — Paragraph 4 of the English translation of the decision to submit a reference for a preliminary ruling.

two companies and that they were accordingly entitled to continue to enjoy the conditions of employment in force at their former employer, they brought proceedings against Liikenne in the Vantaan Käräjäoikeus (Vantaa District Court). Liikenne, for its part, denied that any transfer had taken place.

12. By judgment dated 17 June 1996, the Vantaan Käräjäoikeus held in favour of Mr Liskojärvi and Mr Juntunen. The Helsingen Hovoikeus (Helsinki Court of Appeal), by judgment of 23 October 1997, rejected Liikenne's appeal, and the latter then appealed to the Korkein Oikeus.

13. In its referral for a preliminary ruling the Korkein Oikeus observes that the concept of the transfer of a business remains unclear, particularly where, as in the present case, the transfer is not based on a contract between the parties and there is no transfer of significant assets. [5] The court also points out that the case involves a tender procedure conducted in accordance with Directive 92/50. However, the application of Directive 77/187 in such a context, if it is to protect the rights of employees, may restrict competition between undertakings and prejudice the effectiveness of Directive 92/50. The Korkein Oikeus accordingly seeks guidance as to how the two directives should be reconciled. [6]

14. As it considered that the resolution of the case depended on the interpretation of Article 1(1) of Directive 77/187, the Korkein Oikeus, by its order of 27 April 1999, decided to stay the proceedings and to refer the following question to the Court:

'Is a situation in which the operation of bus routes passes from one bus undertaking to another as a consequence of a tender procedure under Directive 92/50/EEC on public service contracts to be regarded as a transfer of a business for the purposes of Article 1(1) of Directive 77/187/EEC?'

III — The question referred for a preliminary ruling

Introductory observations

15. By the question referred, the national court seeks to know if the provisions of Directive 77/187 are applicable in the context of Directive 92/50. It is also clear from the terms of the question referred [7] that the doubts of the national court were

5 — Ibid., paragraph 21.

6 — Ibid., paragraph 23.

7 — See Paragraph 13 of this Opinion.

sustained by two distinct but complementary problems.

16. The national court observes first of all that the aims of Directive 92/50 do not seem capable of being reconciled with those of Directive 77/187. It therefore asks the Court whether a transaction effected in the context of Directive 92/50 which leads to the transfer of a commercial activity previously carried out by one undertaking to another is in principle covered by Directive 77/187. [8]

17. If the Court's answer to the first question is in the affirmative, the national court seeks an answer to a second question relating to the conditions in which Directive 77/187 applies. [9] This second question can be subdivided into two points.

18. First, the Finnish court asks the Court to say whether the concept of 'legal transfer' referred to in Article 1(1) of Directive 77/187 necessarily requires that there be a direct contractual relationship between the transferor and the transferee. [10]

19. Secondly, the national court asks whether it should be held that there is a transfer of an undertaking in terms of the Directive when there has been no significant transfer of assets between the transferor and the transferee.

20. I shall examine the two questions posed by the national court in turn.

Answer to the first question

21. I am in agreement with the majority of the participants in the case, [11] that the answer to the first question should be in the affirmative, as much by reason of the wording of the Directives in question as by their objectives.

22. According to Article 1(a) of Directive 92/50, public service contracts are defined as 'contracts for pecuniary interest concluded in writing between a service provider and a contracting authority'.

23. In terms of Annex 1A, referred to in Article 8, land transport services are covered by Directive 92/50.

8 — Hereinafter 'the first question'.

9 — Hereinafter 'the second question'.

10 — As defined by points (a) and (b) of Article 2 of the Directive.

11 — Other than Liikenne.

24. It follows from the wording of those provisions that the taking over of land transport activities following a tender procedure for the award of a public service contract requires entry into a contract for pecuniary interest between a contracting authority and a service provider.

25. Under Article 1(1) of Directive 77/187, the transfer of the undertaking concerned must be the result of a legal transfer or merger. The directive does not expressly specify any other condition relating to the parties to the transaction. As I shall explain below, the absence of a direct contractual link between the transferor and transferee is not in principle a matter which will exclude the application of Directive 77/187.

26. Reading these provisions together allows one therefore to state that a transaction to which Directive 92/50 applies may be covered by Directive 77/187 if the other conditions laid down by the latter directive are fulfilled. [12]

27. The national court observes, however, that the object of Directive 77/187 is to protect the rights of employees, whereas Directive 92/50 aims to guarantee the principle of freedom of competition in the context of the award of public service contracts. The national court considers that to apply Directive 77/187 may restrict competition between undertakings and prejudice the effectiveness of Directive 92/50. According to the national court, 'The making of an offer in a public contract procedure and the effectiveness of the procedure may be influenced by the fact that the amount of expenditure arising from employees who may transfer and other costs cannot be ascertained beforehand.' [13]

28. I do not consider that these two directives are incompatible by reason of their objectives.

29. Directive 92/50 aims to eliminate practices which are an obstacle to competition between service providers and to participation in the markets of other Member States.

30. In order to achieve this, the directives require the implementation of uniformly applicable rules throughout the Community by all economic entities.

12 — These points will be developed when the second question is addressed.

13 — See paragraph 23 of the English translation of the decision to submit a reference for a preliminary ruling.

31. In parallel, Directive 77/187 has the objective of ensuring the protection of the workforce in transfers of undertakings, by guaranteeing the continuity of the contractual relations which exist in the context of an economic entity independently of any change in its ownership. [14]

32. The concern expressed by the national court that the application of Directive 77/187 in the context of a tender procedure would call into question the purpose of Directive 92/50 [15] does not seem to me to be well-founded.

33. The aim of Directive 92/50 is not to permit the takeover of economic entities to the detriment of the rights of their workforce but to place those service providers who wish to compete for the award of a contract in equal competitive conditions.

34. Once an offer is accepted, the successful tenderer [16] is required to respect the rights of the workforce in the manner laid down by the Directive. The application of the same rules, whatever the status and nationality of the competing service providers, cannot thereby have the result that they are placed in unequal competitive conditions. On the contrary, it obliges them to observe those same rules. Consequently, it allows equal treatment of the latter.

35. I am not convinced by the argument which states that the principle of legal certainty is opposed to the application of the provisions of Directive 77/187 in the context of Directive 92/50. [17] Before submitting an offer, tenderers know whether, in order to provide the service in respect of which they are competing, they need to acquire the tangible or intangible assets of the undertaking which has been operating the contract until then, or whether they require to take over the whole or a part of the workforce of that undertaking. Equally, they know that, if they proceed to take over the *essential elements* of the transferred entity *which are necessary to the functioning of its activities*, a transfer of an undertaking within the meaning of Article 1(1) of the Directive will arise. [18] In such a case, they will build this information into their costing assumptions when fixing the level of their offer.

36. A reading of Directive 77/187 which allows for its application in the context of Directive 92/50 thus ensures not only the respect of the rules of equal competition for all the participants in the exercise, but also

14 — See Case C-175/99 *Mayeur* v *Association Promotion de l'Information Messine* [2000] ECR I-7755, paragraph 44.

15 — See paragraph 27 of this Opinion.

16 — 'Tenderer' means the service provider who has submitted a tender (Article 1(c) of Directive 92/50).

17 — See paragraph 27 of this Opinion and the arguments put forward on behalf of Liikenne at the hearing.

18 — See further the points made in this Opinion in relation to the second question.

guarantees the rights of employees, who are not to be prejudiced by the change of employer by reason of the transfer of the undertaking. Such a reading will therefore fully reconcile the objectives of Directive 77/187 with those of Directive 92/50.

37. On the other hand, to hold that Directive 77/187 is inapplicable for the simple reason that Directive 92/50 applies would do harm to the objective of the protection of workers in the context of the transfer of an undertaking covered by Directive 77/187 and would not properly meet the objectives of Directive 92/50. The aim of this directive is, as I have mentioned, to guarantee the application of rules of equal competition among economic operators. It does not in any way require Member States to prejudice the rights of the workforce.

38. Accordingly, I am of the view that this interpretation cannot be accepted by the Court.

39. As the national court has described the facts of this case, the activity was transferred as a result of a contract for pecuniary interest entered into between a contracting authority and a tenderer and that activity consists in the provision of land transport services. Such an arrangement is covered in principle by Directive 77/187.

40. It follows from the foregoing that the provisions of Directive 77/187 may be applicable in the context of Directive 92/50 if the other conditions stipulated by Directive 77/187 apply, and I shall examine this point below.

Answer to the second question

41. The national court asks the Court of Justice to give further guidance as to the conditions in which Directive 77/187 applies. It asks first if there is a 'legal transfer', within the meaning of Article 1(1) of the Directive, where, by reason of the taking over of economic activities by a tenderer under Directive 92/50, no contract has been entered into between the tenderer and the former employer. It wishes next to know whether it should be held that there has been a 'transfer of an undertaking', again within the meaning of Article 1(1), where there has been no transfer of significant assets between the tenderer and the previous employer.

(a) The concept of a legal transfer

42. I recently [19] addressed this matter in another case before the Court. [20] I took the view, in light of the aims of the Directive, [21] that the concept should be given a sufficiently wide interpretation to meet the purpose for which the Directive was enacted.

43. I pointed out that the Court had consistently taken the view that the determining factor for establishing whether there had been a 'legal transfer' for the purposes of the Directive was that there be a change of the person — legal or natural, governed by private law or public law — responsible for the operation of the undertaking which enters into the relationship of employer with the employees of the undertaking taken over. It was my view that the absence of any direct contractual link between the two undertakings successively having the character of employer towards the workforce could not in itself remove from the latter their rights under the Directive.

44. In the *Mayeur* case, the Court confirmed its previous approach. It held that 'While the lack of a contractual link between the transferor and the transferee may point to the absence of a transfer within the meaning of Directive 77/187, it cannot be conclusive in that regard'. [22] The Court also explained that 'Directive 77/187 is applicable wherever, in the context of contractual relations, there is a change in the natural or legal person who is responsible for carrying on the business and who thereby incurs the obligations of an employer towards the employees of the undertaking'. [23]

45. In the present case, it is an accepted fact that there was no direct contractual link between Hakunilan Liikenne and Liikenne, but that the latter took over in their entirety the operations previously undertaken by Hakunilan Liikenne. It is also accepted that this takeover was possible only through a contract for a pecuniary interest, in this case a concession, between Liikenne, a legal person governed by private law, and YTV, a legal person governed by public law.

46. This factual situation is similar to that which arose in the *Hidalgo* case. There, as in *Mayeur*, the Court held that 'While the absence of a contractual link... between the

19 — See paragraphs 39 to 47 of my Opinion in the *Mayeur* case, cited above.

20 — See, in particular, Case 324/86 *Foreningen af Arbejdsledere i Danmark* v *Daddy's Dance Hall* [1988] ECR 739, Case C-29/91 *Dr Sophie Redmond Stichting* v *Bartol and Others* [1992] ECR I-3189, Case C-13/95 *Süzen* v *Zehnacker Gebäudereinigung GmbH Krankenhausservice* [1997] ECR I-1259, paragraph 11, and Joined Cases C-173/96 and C-247/96 *Sanchez Hidalgo and Others* v *Asociacion de Servicios Aser* and *Zieman* v *Zieman Sicherheit and Another* [1998] ECR I-8237, paragraph 22.

21 — See, in particular, the judgment in *Mayeur*, cited above, at paragraph 44.

22 — Ibid. at paragraph 45.

23 — Ibid. at paragraph 46.

two undertakings which were successive beneficiaries of a concession [let by a municipality, being a legal person governed by public law] in relation to a home-help service or entrusted with the task of managing a sewage works, may serve to indicate that there has been no transfer in the sense of Directive 77/187, but is not determinative in this regard.' [24]

47. It follows from the above that the fact that no direct contractual link exists between two undertakings who were successive beneficiaries of a concession, granted following a public service contract award procedure under Directive 92/50, in relation to land transport (in this case the operation of regional bus routes) by a legal person governed by public law does not prevent Directive 77/187 from applying where the other conditions laid down by that directive are fulfilled.

(b) The concept of transfer of an undertaking

48. The Court has consistently held that 'The decisive test for establishing the existence of a transfer within the meaning of Directive 77/187 is whether the entity in question retains its identity [after the transfer has taken place]'. [25]

49. In order to clarify this requirement, the Court explained that 'The mere fact... that the activity engaged in by the old and the new employer is similar does not justify the conclusion that an economic entity has been transferred. Its identity also emerges from other factors, such as its workforce, its managerial staff, the way in which its work is organised, its operating methods or indeed, where appropriate, the operational resources available to it.' [26] In the Court's opinion, the term 'economic entity' refers to an *organised grouping of persons and assets* facilitating the exercise of an *economic activity* which pursues a specific objective. [27]

50. Two conditions must therefore apply in order for the identity of the undertaking to have been maintained after the transfer.

51. First, the transferee must carry on the same economic activity as was carried on by the transferor before the transfer, or a

24 — Paragraph 22.

25 — See the judgment in *Mayeur*, cited above, at paragraph 44.

26 — Ibid. paragraph 49.

27 — *Süzen* judgment, cited above, at paragraph 13.

similar activity. This first condition can be defined as 'identity of the activity'.

52. Secondly, there must have been the transfer of the means necessary to undertake the activity in question, or of the means required to operate it, having regard to the nature of the entity transferred. This second condition can be defined as 'identity of the entity'.

53. In order to establish whether these conditions have been met, regard must be had to the facts of the case. That is clearly a matter for the court adjudicating on the substance of the matter and not one for this Court. This has been stated on numerous occasions, notably in the recent case of *Mayeur*. [28]

54. Nevertheless, with a view to assisting the national court in its task, the Court has specified a number of factual circumstances which may be taken into account by the national court in establishing whether the transaction in question is to be treated as the 'transfer of an undertaking'.

55. These circumstances comprise 'in particular the type of undertaking or business, whether or not its tangible assets, such as buildings and movable property, are transferred, the value of its intangible assets at the time of the transfer, whether or not the majority of its employees are taken over by the new employer, whether or not its goodwill is transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, for which those activities are suspended.' [29]

56. In order to provide further assistance to the national court in carrying out this task, the Court has given directions as to the line of enquiry to be followed by the national court.

57. The Court has stated that 'However, those circumstances are merely single factors in the overall assessment which must be made and cannot therefore be considered in isolation'. [30]

58. The Court has furthermore pointed out that in fulfilling its role, the national court must assess the degree of importance to be given to the various elements of the trans-

28 — Paragraph 52.

29 — Ibid.

30 — Ibid.

action, having regard to all the circumstances [31] and must take into account the type of undertaking or business transferred, [32] having regard in particular to the sector of activity in which it operates. The national court must therefore determine which are the essential and indispensable elements required in order for the economic entity to carry on operating and establish whether these elements have been taken over by the transferee.

59. Although the Court has held in principle that for an economic entity to exist there should be an identifiable group of workers and significant tangible or intangible assets, it has nonetheless accepted that such an entity may function even in the absence of any assets belonging to the undertaking which formerly carried on the business. In particular, the Court has found to this effect in the case of certain sectors such as cleaning and security. [33]

60. If it is accepted that, in certain sectors, an economic entity may exist without having significant assets, tangible or intangible, the maintenance of its identity following the transfer affecting it cannot, logically, depend on the transfer of such assets. That point was made by the Court in the *Süzen* case. [34]

61. It is clear, and this point was accepted by all parties participating in these proceedings, that the activity carried on by the successive undertakings in the present case represented the same economic activity. [35] It consisted of the operation of seven regional bus routes. The first condition required by the Court's case law, namely that of identity of economic activity, is therefore met.

62. The participants are, however, not in agreement as to whether the second condition, namely the identity of the entity, is met.

63. It is accepted that the majority of the workforce of the undertaking were taken over by Liikenne. It is also clear that Liikenne's succession to the activity carried on by Hakunilan Liikenne did not involve any transfer of the assets used in connection with the operation of the seven bus routes in question. [36]

31 — See, in particular, Case C-234/98 *Allen and Others* v *Amalgamated Construction Co* [1999] ECR I-8643, paragraph 28 and the judgment in *Süzen*, cited above, at paragraph 18.

32 — See, in particular, the judgment in *Sanchez Hidalgo and Others* at paragraph 29, or *Süzen*, cited above, at paragraph 18.

33 — See, in particular, *Sanchez Hidalgo and Others*, cited above, at paragraph 26.

34 — Paragraph 18.

35 — As regards the concept of 'economic activity' in the sense of the Directive, see the Mayeur judgment, cited above, at paragraphs 39 and 40, and paragraphs 56 to 61 of my Opinion in the same case.

36 — See paragraphs 3 and 4 of the English translation of the reference for a preliminary ruling.

64. In order to answer this question it is necessary for the national court to proceed in accordance with the approach laid down by the Court of Justice.

65. First of all, it should consider *all the circumstances which characterise the operation in question*. To do this, it should have regard to the fact that the takeover of the activity *did not involve any transfer of tangible assets*, but that, on the other hand, the majority of the personnel engaged in carrying on the activity prior to the transfer were reengaged by the successful tenderer. It should also have regard to the specific nature of the undertaking involved in the transfer, that is to say to the fact that it consisted of an undertaking which operated regional bus routes. It may also take other matters into account. For example, it should decide whether the customer base as a whole was taken over by Liikenne and determine the economic value of this element of the immovable assets in the context of the activity transferred.

66. Secondly, the national court will have to *assess the respective importance to be given to these separate elements*. [37] In order to do this, it should form a view as to what characterises, or what distinguishes, the economic entity which was the subject of the operation in question, in this case the bus operations carried on by Hakunilan Liikenne and then by Liikenne.

67. The Commission is of the view that the workforce is the key element of the service offered in this case, namely bus transport. The buses, which ultimately were not taken over by Liikenne, were accessory to the exercise. In the final analysis, the Commission considers that bus transport is an activity which is fundamentally based on manpower.

68. It is not appropriate for the Court of Justice to substitute its view for that of the national court, which is the sole judge of the question whether, in the present case, the economic entity has kept its identity following the transfer. Replying to that question necessarily involves a purely factual assessment of a particular situation. However, I consider that the national court's attention should be drawn to the following points.

69. Unlike the Commission, I do not think that the key element of an economic entity such as a transport undertaking which operates regional bus routes is its workforce. In my view, the essential element, without which such an economic entity is

37 — It is possible in particular that the workforce taken over has very specific qualifications or experience, indispensable to the activity in question. In such a case, it could be very difficult to find a workforce having this type of experience in the market place. It would follow that the essential characteristic of the economic entity in such a case might not be found in the relevant assets, but in a workforce which has that specific and rare experience in the market place.

incapable of functioning normally, consists *in principle* in its fleet — lorries, cars, buses... — and not in its workforce. [38]

70. Furthermore, it is appropriate to point out to the national court that this Court has consistently held that in principle the concept of an economic entity presupposes the existence not only of a workforce but also of tangible and intangible assets. [39] The Court has equally consistently taken the view that, in specific cases, the fact that an economic entity has no assets and is essentially characterised by its workforce does not prevent the Directive from applying even in the absence of any transfer of assets. [40] The conclusion to be reached, therefore, is that where an undertaking comprises significant assets which are indispensable to its operation, the absence of any transfer of those assets means that it is in principle wrong to hold that the provisions of Article 1(1) of the Directive apply.

71. It follows from the above that, where the economic entity which transfers its activity possesses significant assets, the principle that the absence of any transfer of those assets by the transferor to the transferee would preclude application of the provisions of Directive 77/187 has been laid down by the Court.

72. In my view, to follow the reasoning of the Commission would render this principle devoid of any useful effect.

73. That is why I am of the view that the Commission's argument in its submissions to the Court is not in accordance with the interpretation which the Court has given to the Directive, nor with the economic reality of the entity in question in this case.

74. It follows from the above that the absence of a transfer of significant assets from a regional bus transport undertaking to another undertaking carrying on the same type of business does not support a conclusion that Directive 77/187 is applicable.

38 — My opinion might have been different if the transport activity in question had required special qualifications on the part of the workforce whose task it was to operate it. For example, the transportation of dangerous substances, which require that the personnel involved receive special training. In such a case, the immediate replacement of the workforce of the business transferred by personnel having only normal qualifications would be impossible, as additional training would be required. It follows that in certain cases it cannot be ruled out that the workforce may represent the key element of the economic activity in question where there is a transfer of a transport undertaking. In short, I think that, in such cases, the takeover of the workforce in the absence of a takeover of significant assets would not prevent Article 1(1) of the Directive from applying.

39 — See, as regards the last point, the *Mayeur* judgment, cited above, at paragraph 32.

40 — See the *Süzen* judgment, cited above, at paragraphs 17 and 18.

Conclusion

75. In view of the consideration set forth above, I propose that the Court answer the questions put by the Korkein Oikeus as follows:

(1) The takeover by an undertaking which is a legal person governed by private law of land transport activities, consisting in the present case of the operation of regional bus routes, previously carried on by another undertaking which was a legal person governed by private law, following a procedure for the award of a public service contract Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts may fall within the scope of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, as defined by Article 1(1) of that Directive.

(2) Article 1(1) of Directive 77/187 is to be interpreted to the effect that:

(a) it may apply in the absence of a direct contractual link between two undertakings to whom there has been successively granted, following a procedure for the award of a public service contract under Directive 92/50, a concession for the operation of a land transport service (in this case, the operation of regional bus routes) by a legal person governed by public law;

(b) it does not apply in the absence of a transfer of significant assets between the two undertakings.